



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0653]

RIN 1625-AA00

Safety Zone; Bahia De San Juan, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within Bajo San Agustin of San Juan Harbor. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by an anticipated increase in vessel traffic due to unplanned and unpublished maritime events. Entry of vessels or persons into this zone, either from adjacent waters or from the shoreline, is prohibited unless specifically authorized by the Captain of the Port San Juan.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 12:00 a.m. on August 3, 2019. For purposes of enforcement, actual notice will be used from 12:00 p.m. on July 25, 2019 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0653 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have any questions concerning this rule, please call or email LCDR Pedro Mendoza, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone 787-729-2374, email Pedro.L.Mendoza@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding planned maritime events with enough time to publish a NPRM. Coast Guard received notice of an anticipated increase in vessel traffic scheduled near Bajo San Agustin with less than 24 hours’ notice. Immediate action is needed to respond to the potential safety hazards associated with these activities. This temporary rule is necessary to provide for the safety of potential participants, spectators, and other vessels navigating the surrounding waterways.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this

rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the anticipated increase in vessel activity is expected to occur from July 25, 2019 to August 3, 2019 and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Juan (COTP) has determined that potential hazards associated with increased vessel traffic and activities starting July 25, 2019, will be a safety concern for anyone within Bajo San Agustin of San Juan Harbor. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during an anticipated increase in vessel traffic due to unplanned and unpublished maritime events.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:00 p.m. on July 25, 2019 through 12:00 a.m. on August 3, 2019. The safety zone will cover all navigable waters within Baja San Agustin. The size of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while increased vessel activities remain in effect. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. Additionally, no vessel or person will be permitted to enter the safety zone from the shoreline without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the expected size, location and available exceptions to the enforcement of the safety zone. The regulated area will impact small designated areas within Bahia de San Juan and thus is limited in scope. Furthermore, the rule will allow vessels to seek permission to enter the zone. Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the COTP or a designated representative. Vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP or a designated representative may operate in the surrounding areas during the enforcement period. The Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within Bajo San Agustin of San Juan Harbor. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0653 to read as follows:

§ 165.T07-0653 Safety Zone; Bahia de San Juan, San Juan, PR.

(a) Location. The following area is a safety zone: Bajo San Agustin of San Juan Harbor, from surface to bottom, encompassed by a line connecting the following points beginning at

18°27'57" N, 66°7'19" W, thence to 18°27'53" N, 66°7'26" W, thence to 18°27'46" N, 66°7'15" W, thence to 18°27'50" N, 66°7'10" W and along the shore line back to the beginning point. All coordinates are North American Datum 1983.

(b) Definitions. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Juan (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by contacting the US Coast Guard Cutter YELLOWFIN via VHF-FM marine channel 16 or the US Coast Guard Sector San Juan Command Center at (787) 729-6800. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) Enforcement period. This section will be enforced from 12:00 p.m. on July 25, 2019 through 12:00 a.m. on August 3, 2019.

Dated: July 25, 2019.

G. H. Magee,
Captain, U.S. Coast Guard,
Acting Captain of the Port Sector San Juan.
[FR Doc. 2019-16232 Filed: 7/26/2019 8:45 am; Publication Date: 7/30/2019]